

BEFORE THE VILLAGE BOARD OF THE VILLAGE OF ROUND LAKE PARK
SITTING AS POLLUTION CONTROL FACILITY SITING AUTHORITY

IN RE: APPLICATION FOR LOCAL SITING)
 APPROVAL FOR GROOT INDUSTRIES) 03-01
 LAKE TRANSFER STATION)

NOTICE OF FILING

TO: keggert@villageofroundlakepark.com See Attached Service List
CFazekas@RoundLakePark.us
pluetkehans@slg-atty.com

PLEASE TAKE NOTICE that on **October 21, 2013**, there was filed electronically **VILLAGE OF ROUND LAKE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**, a copy of which is hereby attached and served upon you.

VILLAGE OF ROUND LAKE

BY: Stephen Grossmark
One of Its Attorneys

Stephen Grossmark
TRESSLER LLP
233 South Wacker Drive, 22nd Floor
Chicago, Illinois 60606-6399
Telephone: (312) 627-4000

PROOF OF SERVICE – VIA E-MAIL

I, the undersigned, on oath state that I served the above-referenced documents upon the above-referenced parties at their E-Mail addresses listed above on the 21st day of October, 2013.

Carla Chengany

SUBSCRIBED and SWORN to before
me this 21st day of October, 2013.

Karen J. Sommerfeld
NOTARY PUBLIC



SERVICE LIST

Case No. 03-01

<u>Attorneys for Groot Industries</u> Charles F. Helsten Robert Porter Hinshaw Culbertson LLP 100 Park Avenue P.O. Box 1389 Rockford, IL 61105-1389 815-490-4906 / 815-490-4901 (fax) chelsten@hinshawlaw.com rporter@hinshawlaw.com	<u>Attorney for Groot Industries</u> George Mueller Mueller Anderson & Associates 609 Etna Road Ottawa, IL 61350 (815) 431-1500 george@muelleranderson.com
<u>Attorney for the Village of Round Lake Park</u> Glenn C. Sechen The Sechen Law Group, PC 13909 Laque Drive Cedar Lake, IN 46303 312-550-9220 glenn@sechenlawgroup.com	<u>Attorney for The Solid Waste Agency of Lake County, Illinois</u> Larry M. Clark Attorney At Law 700 North Lake Street, Suite 200 Mundelein, IL 60060-1353 847-949-9396 / 847-949-9427 (fax) larrymclark55@sbcglobal.net
<u>Attorney for the Village Board Village of Round Lake Park</u> Peter Karlovics Magna & Johnson 495 N. Riverside Dr., Suite 201 P.O. Box 705 Gurnee, IL 60031 847-623-5277 / 847-623-5336 (fax) pkarlovics@aol.com	<u>Attorney for Timber Creek Homes, Inc.</u> Michael S. Blazer Jeffery D. Jeep Jeep & Blazer, LLC 24 N. Hillside Ave., Suite A Hillside, IL 60162 708-236-0830 / 708-236-0828 (fax) mblazer@enviroatty.com jdjeep@enviroatty.com
Brian Smith 204 Newhouse Lane Round Lake Park, IL 60073 847-436-6126 harleybuddha1@sbcglobal.net	

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VILLAGE OF ROUND LAKE'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

The Village Board ("Board") of the Village of Round Lake Park ("VRLP") is authorized to approve or disapprove the application by Groot Industries, Inc. ("Groot") for local siting approval of the proposed Lake Transfer Station ("Transfer Station"). As the applicant, Groot must submit sufficient details describing the proposed facility in order to demonstrate compliance with criteria listed in Section 39.2(a) of the Illinois Environmental Protection Act ("Act"). 415 ILCS 5/39.2(a).

Despite Groot's attempts, it has not met its burden regarding several of the criteria, and in particular regarding the criteria found at the subparts to Section 39.2(a) at (i) regarding need, (ii) regarding protection of the public, (iii) regarding compatibility with the area and impact on property value, (vi) regarding traffic and (viii) regarding consistency with the local waste plan. For these reasons, the Groot application for local siting approval should be denied.

In the alternative, if the Board approves Groot's application, important and necessary conditions should be part of any such authorization. This would include limits on and requirements regarding the Transfer Station operation.

The facts, and expert opinions, in this case are many, and are contained in Groot's application, provided in testimony by experts at the hearing and set out in exhibits admitted into the record also at the hearing. Different parties and entities can have different views of the facts. The Village of Round Lake ("VORL") has distilled the essential facts down for resolution of the issues in this case.

Groot was represented at the hearing on its application by its attorneys, three from two law firms, and it presented retained expert witnesses, five such expert witnesses testifying on various topics. However, Groot presented no fact witnesses on any topic. This includes, for example, Groot's experience at operating a transfer station. And others did not provide facts regarding this example. Groot's lead consultant, Mr. Devin Moose of Shaw Environmental, Inc., a CB&I Company, testified that his company is not involved in the operation of a transfer station after it starts operation. Devin Moose hearing testimony, 9/23/13 ("DM/9/23/13"), 3 p.m., pages 26-27, 33-35.

I. Approval/Disapproval of the Siting Application

A. Findings of Fact

Groot's application requests siting approval for a transfer station that would handle mostly municipal waste but also landscape waste and source-separated recyclables. Groot seeks authority for it to operate the Transfer Station 24 hours each day, seven days a week for an unlimited amount of time into the future. DM/9/23/13, noon, page 61, Devin Moose 9/23/13 Power Point presentation, Groot Exhibit 4, slide 31. There would be no limit on the amount of waste that the transfer station could receive. DM/9/23/13, 3 p.m., page 38.

The proposed building at the site will have a capacity to hold at any one time about 800,000 cubic feet of waste, Charles McGinley report dated 9/10/13, and the facility can handle more than 900 tons/day, DM/9/23/13, 3 p.m., pages 37-38. The host agreement entered into between Groot and the VORLP provides a formula for payment to the VORLP based on the amount of waste received by the transfer station. The agreement contemplates acceptance of waste up to 1000 tons/day, though the VORLP would not be paid for amounts accepted in excess of 1000 tons/day. Groot Application, Exhibit C.

The floor, or the tipping floor, and the push walls of the building at the Transfer Station will be made of concrete, which is permeable or porous. Quantities of prohibited materials, including liquids, reach the tipping floor and can get into the concrete. DM 9/23/13, 3:00 p.m., page 42, 45-50.

Municipal waste and landscape waste have odors. The main preventative measures that can be done to prevent odor at a Transfer Station is to clean the building. DM/9/23/13, noon, pages 64-65, DM/9/23/13, 3 p.m., page 65.

The doors of the facility will be open 20 hours each day and closed only from 4:00 a.m. to 8:00 a.m. or when Groot deems it appropriate, though no objective standard for closing the doors was provided. DM/9/23/13, noon, page 67, DM/9/23/13, 3 p.m., page 64.

The building is proposed to have negative air pressure and will exhaust air from the building to the outside four to six times each hour through vents elevated on the sides and/or in the roof of the building. The downside to exhausting the air with odors out the roof or at elevation is that the odor can be taken downwind. DM/9/23/13, noon, page 48, Charles McGinley testimony/9/30/13, 3:00 p.m., pages 92-94. Filters at the vents that would capture odors and prevent them from being emitted from the building are available, Charles McGinley testimony/9/30/13, 3:00 p.m., pages 94-96, but not planned to be installed and used at the Transfer Station.

Residential property makes up 37% and open space makes up 55% of the area located within one mile of the site. Groot Application, page 3.1-6.

A transfer station can be planned and built in three to four years, DM/9/23/13, 3:00 p.m., page 90, or, in this situation, with much of the work already done, two to three years, John Thorsen 8/30/13 report, TCH Exhibit 2.

Groot maintains that development of this transfer station is needed now and important in part because the two in-county landfills are filling and the Transfer Station will promote sustainable development, including by reducing vehicle miles, reducing air emissions, conserving fuel and reducing dependency on foreign oil. Groot Application, page E-5. Lake County has landfill capacity until the end of 2027. Groot Application, page 1-8. This transfer station won't promote sustainable development in the ways listed until 2027 and undermines sustainable development before 2027. John Thorsen testimony/9/25/13, 3:00 p.m., pages 91-92.

Groot's expert on compatibility of the proposed site with the character of the surrounding area is J. Christopher Lannert. He based his opinion on the Transfer Station having a design capacity of approximately 750 tons/day and rendered his opinion based on this and other assumptions. He is not aware of whether or not the site could increase capacity though he is aware that the design capacity has some flexibility. He has not studied the compatibility issue with a volume assumption other than 750 tons/day. That was not part of his assignment. If the amount accepted changed, if it was reduced or doubled in size, he would like to have the opportunity to determine if that would impact his opinion. J. Christopher Lannert hearing testimony, 9/24/13, noon, pages 121-123. In addition, the Village presented an expert, Dale Kleszynski, regarding this issue, as well as the traffic issue. However, Mr. Kleszynski agreed that Mr. Lannert's report and opinions have a certain scope and boundary. Mr. Kleszynski also agrees that his report and opinions are limited by the scope of Mr. Lannert's report and opinions. Dale Kleszynski testimony/10/2/13, page 50.

Groot's expert on traffic, Michael Wirthman, conducted a study that involved an area that included Cedar Lake Road at IL 120 to Hainesville Road at IL 120 and Porter Drive and IL 134 to IL 134 at IL 120. Mr. Wirthman assumed that the site would accept 750 tons/day, knowing that Groot was not looking at this amount as an upper limit. He testified that, assuming operations from 4:00 a.m. to 8:00 p.m., vehicles, the vast majority of which will be trucks, will enter and leave the site on average every three minutes. Michael Wirthman testimony/9/25/13, noon, pages 99, 100-104, 114.

Wastes from the Transfer Station will be brought to the Winnebago landfill in Winnebago County, Illinois. The Winnebago landfill has not entered into a host agreement with the Solid Waste Agency of Lake County ("SWALCO"), has not provided a capacity guarantee to SWALCO for Lake County waste and has not agreed to pay a host fee to SWALCO for every ton of Lake County waste that Winnebago County takes. DM/9/25/13, 3:00 p.m., pages 4-8.

B. Conclusions of Law

1. The proposed facility is not necessary to accommodate the waste needs of the area.

Groot has not shown that criteria Section 39.2(a)(i) has been met, that the facility is necessary to accommodate the waste needs of the area it is intended to serve.

The application reports that Lake County has landfill capacity until 2027. A transfer station can be planned and built in three to four years or, in this situation, with much of the work already done, two to three years. Therefore, a transfer station in Lake County does not need to be developed, including by seeking siting approval, and is not necessary to accommodate the waste needs of Lake County until, based on this record, ten years down the road, in about 2023 or 2024.

Groot has not met its burden regarding this criteria at this time.

2. The proposed facility is not designed, located and proposed to be operated so that the public health, safety and welfare will be protected.

Groot has not shown that Section 39.2(a)(ii) has been met, that the facility is designed, located and proposed to be operated so that the public health, safety and welfare will be protected.

First, when making a decision on this criteria, information may be considered regarding previous operating experience in the field of solid waste management. 415 ILCS 5/39.2(a). However, Groot presented no information at the hearing regarding its experience regarding operation of transfer stations.

Second, a significant amount of residential property, 37%, is located within one mile of the site. Odors from the operation will be emitted from vents at the roof or elevated at the sides of the proposed building, which permits the odors to be carried downwind.

Also, traffic in the area will be impacted. Vehicles, the vast majority of which will be trucks, will enter and leave the site on average every three minutes, assuming operations from 4:00 a.m. to 8:00 p.m. during a day and the site accepting 750 tons of waste during that day. If more waste is accepted at the site, as Groot has requested, more vehicles will enter and leave the site and a vehicle will enter and leave the site more frequently than on average every three minutes. As a practical matter, vehicles will enter and leave the site less and more frequently than this average time interval depending on different levels of activity at the site during the day. No information was submitted into the record about the number of vehicles entering and leaving the landscape waste and construction debris site that Groot intends to start operating directly across Porter Drive. However, this will result in vehicles entering and leaving both sites more frequently than every three minutes.

Based on odor concerns and the significant increase in traffic at IL 120 and Porter Drive, as well as the record containing no information about Groot's history of operating transfer stations, Groot has not shown that Section 39.2(ii) has been met, that the facility is designed, located and proposed to be operated so that the public health, safety and welfare will be protected.

3. The proposed facility is not located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.

Groot has not shown that Section 39.2(a)(iii) has been met, that the proposed facility is located so as to minimize incompatibility with the character of the surrounding area.

Groot produced one witness to address this issue, retained expert Christopher Lannert. Mr. Lannert was not aware that Groot's application to approve the subject siting is based on no maximum limit as to the amount of waste that can be accepted at the Transfer Station. Instead, he based his opinion on the Transfer Station having a design capacity of approximately 750 tons/day and he rendered his opinion based on this assumption. Mr. Lannert is not aware of whether or not the site could increase capacity though he is aware that this design capacity has some flexibility. He has not studied the compatibility issue with assumptions other than the site accepting 750 tons/day since that was not part of his assignment. If the amount accepted changed, for example if it was reduced or doubled, he would like to have the opportunity to determine if that would impact his opinion.

In addition, the Village's expert on this issue, Dale Kleszynski, reviewed Mr. Lannert's report and opinions, limiting Mr. Kleszynski's opinions as Mr. Lannert's opinions are limited.

Since Groot is requesting in its Application that it be permitted to accept unlimited amounts of waste at the Transfer Station and neither Mr. Lannert nor Mr. Kleszynski addressed this design, there are no expert opinions or other support that the proposed facility is located so as to minimize incompatibility with the surrounding area. Therefore, Groot has submitted no information, fact or opinion, to support the compatibility criteria and has not met its burden regarding this issue.

4. The traffic patterns to and from the facility have not been designed to minimize the impact on existing traffic flows.

Groot has not shown that Section 39.2(a)(vi) has been met, that the traffic patterns to and from the proposed facility have been designed to minimize the impact on existing traffic flows.

Groot's expert on traffic, Michael Wirthman, conducted a study regarding traffic that involved an area that included Cedar Lake Road at IL 120 to Hainesville Road at IL 120 and Porter Drive at IL 134 to IL 134 at IL 120. However, no information and no expert opinions by Mr. Wirthman were provided explaining how the area of study was determined, other than apparently selecting the area randomly, and then deciding the area was appropriate for the

traffic study. Since the underpinnings of Mr. Wirthman's opinions and report were not submitted to the record, his opinions, report and testimony should be disregarded. Groot then has provided no information to support its position regarding this criteria.

Instead, since the expert produced by Timber Creek Homes, Inc., Brent Coulter, opined that Groot has not produced sufficient information to meet this criteria, TCH Exhibit 6, the record supports the notion that Groot has not met its burden regarding this criteria.

5. The proposed facility is not consistent with the local solid waste plan.

Groot has not shown that Section 39.2(a)(viii) has been met, that the proposed facility is consistent with the local solid waste plan.

The 2009 Solid Waste Management Plan Update for Lake County, Illinois, provides in part that SWALCO will consider expanding the list of landfills located outside of Lake County deemed to be serving Lake County if the landfill proposed for inclusion first negotiates a host agreement with SWALCO. That host agreement must provide for a capacity guarantee and payment of a host fee for each ton of Lake County waste taken to the landfill. TCH Exhibit 27, page 4-9.

Wastes from the Transfer Station will be brought to the Winnebago landfill in Winnebago County, Illinois. The Winnebago landfill has not entered into a host agreement with the Solid Waste Agency of Lake County ("SWALCO"), has not provided a capacity guarantee to SWALCO for Lake County waste and has not agreed to pay a host fee to SWALCO for every ton of Lake County waste that Winnebago County takes.

Since Winnebago County has not entered into the required host agreement with SWALCO, including as to the required provisions, Groot has not shown that the Transfer Station is consistent with the local solid waste plan.

6. Conclusion

For the foregoing reasons, the Groot application for local siting approval should be denied.

II. Conditions

In the alternative, if the Board approves the Groot siting application, that authorization should only be provided with conditions.

A. Findings of Fact

Including the facts set out above, certain aspects of the proposed design and operation of the Transfer Station warrant particular attention. Information in this regard is set out in the Application and was the subject of testimony at the hearing. See for example Groot Application, pages 2.3-1 to 2.3-6, 2.4-1 to 2.4-14, DM/9/23/13, 3:00 p.m., pages 30-94.

1. Waste unloading reportedly will involve the collection vehicle discharging its contents on the tipping floor. Incoming loads will be inspected at three points during the unloading and loading processes, at the scale house by the scale attendant, by the front-end loader operator during consolidation of waste materials and by the excavator operator during the loading of the transfer trailers. As the front end loader consolidates waste, an additional opportunity is provided to inspect the waste. The processes to unload, consolidate and re-load takes minutes and it appears that these inspections will be cursory. Also, three loads of waste will be randomly checked each week. Adequate information was not submitted as to why more frequent and detailed inspections would not be beneficial.
2. The tipping floor will be concrete, which is permeable. Liquid reaches the tipping floor and penetrates the concrete. Adequate information was not submitted as to why the concrete floor cannot be sealed.
3. Waste can remain on the tipping floor overnight, though it is planned that it won't be unattended.
4. The facility will pre-approve haulers, but inadequate facts regarding the pre-approval process were submitted into the record.
5. Facility personnel will be trained to identify unacceptable waste, though adequate information was not submitted to the record regarding the nature of this training.
6. Facility cleaning will consist of mechanically sweeping of the tipping floor daily and periodic pressure washing of the push walls. If necessary, a disinfectant will be used in the wash water used on the push walls to control odors. No information was provided as to when use of disinfectant would be necessary or why regular pressure washing and use of a disinfectant and a detergent would not be beneficial for both the tipping floor and pushwalls.

B. Conclusions/Conditions

If Groot siting application is approved, the following conditions should be included in any such authorization.

1. The Transfer Station can accept at most 750 tons of waste each day.
2. The Transfer Station can operate only from 6 a.m. to 6 p.m. Monday through Friday and from 6 a.m. to noon on Saturday and shall not operate on Christmas Day and New Years Day; Groot may petition the Board to authorize temporary operations at other and additional times in case of severe weather, a special event and similar situations and the Board will not unreasonably withhold approval but can impose reasonable conditions on the other or additional times of operation.

3. Two loads of waste will be randomly checked each day from Monday to Friday and one load will be randomly checked on Saturday.
4. The push walls will be power washed one time each week including by using detergent and disinfectant on alternating weeks; the tipping floor will be power washed one time each month with detergent and disinfectant; this power washing will be performed more frequently if necessary in order to address odors.
5. Transfer trailers and collection trucks owned or operated by Groot will be cleaned one time each month including by using a detergent and disinfectant on alternating months; Groot will for transfer trailers and collection it does not own or operate have followed the same cleaning procedures by requiring this in contracts with the owners or operators of these vehicles.
6. Groot will install at air exhaust vents and use filters that remove odor from exhaust air before the air is exhausted from the building.
7. Groot will landscape the east side of the property if the nature and appearance of the property to the east changes; landscaping at and around the entire site will, within three years of the start of site operations, block the site from offsite view, including the building, trucks and trucks traffic at the site, to the fullest extent reasonably possible.
8. Groot will record information about and maintain documents regarding its operations including as to compliance with these conditions; Groot will permit inspection of the facility and these documents by the Board and Lake County.

These conditions are reasonable and based on the record and should be included in any approval of Groot's Application.

Conclusion

Based on the foregoing, the Groot application for local siting approval should be denied. In the alternative, if it is approved, the conditions listed above should be included with any such authorization.

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By: Stephen Grossmark
Stephen Grossmark

Stephen Grossmark
Tressler LLP
233 South Wacker Drive, 22nd Floor
Chicago, IL 60606
(312) 627-4000